



POLICE DEPARTMENT CITY OF NEW YORK

November 14, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Vladimir Radionov
Tax Registry No. 939265
Housing Police Service Area 9
Disciplinary Case No. 2015-14005

Charges and Specifications:

1. Said Police Officer, Vladimir Radionov, on March 12, 2015 at approximately 12:30 hours, assigned to the 94th Precinct and on duty, inside the 94th Precinct stationhouse, located at 100 Meserole Ave, Kings County, was discourteous to Minor A in that he stated to Minor A, in sum and substance, "fucking piece of shit."

P.G. 203-09, Page 1, Paragraph 2 - PUBLIC CONTACT – GENERAL

2. Said Police Officer, Vladimir Radionov, on March 12, 2015 at approximately 12:30 hours, assigned to the 94th Precinct and on duty, inside the 94th Precinct stationhouse, located at 100 Meserole Ave, Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, by threatening to arrest Minor A without sufficient legal authority, in that he stated to Minor A, in sum and substance, "I can't wait to lock up this piece of shit," and, "As soon as you turn sixteen, you will be in central booking every single day for every little thing."

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED CONDUCT

3. Said Police Officer. Vladimir Radionov, on March 19, 2015 at approximately 10:00 hours, assigned to the 94th Precinct and on duty, in the vicinity of Nassau Avenue and Lorimer, Kings County, was discourteous to Minor A in that he stated to Minor A, in sum and substance, "You fucking piece of shit."

P.G. 203-09, Page 1, Paragraph 2 - PUBLIC CONTACT- GE ERAL

4. Said Police Officer, Vladimir Radionov, on March 19, 2015 at approximately 10:00 hours, assigned to the 94th Precinct and on duty, in the vicinity of Nassau Avenue and Lorimer. Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, by threatening to arrest Minor A without sufficient legal authority, in that he stated to Minor A, in sum and substance. "I'm gonna fucking pick you up every day for anything," and "You fucking piece of shit, you're gonna be in Booking every day, just watch."

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED CONDUCT

Appearances:

For CCRB-APU: Andre Applewhite, Esq.
Civilian Complaint Review Board
100 Church Street, 10th floor
New York, NY 10007

For the Respondent: Michael Martinez, Esq.
Worth, Longworth & London, LLP
111 John Street – Suite 640
New York, NY 10038

Hearing Dates:

August 17 and August 25, 2016

Decision:

Guilty

Trial Commissioner:

ADCT Paul M. Gamble

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on August 17 and August 25, 2016. Respondent, through his counsel, entered pleas of Not Guilty to the subject charges. CCRB called Minor A and Minor B as witnesses. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Guilty of the charged misconduct.

FINDINGS AND ANALYSIS

The following is a summary of the undisputed facts in this case. Respondent is assigned to the Schools Team in the 94th Precinct and has been so assigned for nine years (T. 87). Minor A and Minor B are brothers who attend schools within the 94th Precinct (T. 27, 74). Respondent is familiar with both [REDACTED] brothers, and they with him, based upon instances when he interdicted them for truancy (T. 94-95, 97, 99). On March 12, 2015, Minor A was detained by Police Officers Kieron Lessey and Sandy Torres after he became involved in a physical altercation between Minor B and Minor C, another student (T. 27; Respondent's Ex. A 2, p. 5; CCRB Ex. 4-B, p. 5-6). Police Officers Lessey and Torres transported Minor A and Minor C to the 94th Precinct for the completion of juvenile reports (T. 27, 74; Respondent's Ex. A-2, p. 6; CCRB Ex. 4-B, p. 6).

On March 19, 2015, at approximately 1000 hours, at a time when they should have already been in school, Minor A and Minor B exited a grocery store near Nassau Avenue and Lorimer Street, Kings County (T. 32, 75). Minor A observed police officers engaged in what he believed to be a truancy interdiction operation and fled from the area (T. 33, 75). Minor A was pursued, eventually caught and returned to the area of the grocery store (*Id.*).

The following is a summary of the facts which are in dispute. Minor A testified that on March 12, 2015, while he was being processed at the 94th Precinct, Respondent called him a "piece of s -- t" (T. 27). Respondent allegedly stated to Officers Lessey and Torres, in Minor A's presence, "Oh, I can't wait until he's 16; I'm going to have him in Bookings every single day" (*Id.*).

Minor A testified further that on March 19, 2015, he was detained by Respondent and brought to a police van (T. 33). Respondent stated, "You piece of s -- t; you're always running or something" (*Id.*). Respondent then asked Minor A, "How old are you; are you 16 yet?" (*Id.*).

When Minor A responded that he was not, Respondent allegedly stated, "I can't wait until you're 16. You're going to be - I'm going to pick you up every day. Watch, you're going to be in Bookings every day" (*Id.*).

Minor B testified that on March 12, 2015, his brother Minor A was detained by members of the 94th Precinct Schools team in connection with a fight (T. 74). Minor B testified that he followed the police officers to the 94th Precinct, then saw Respondent and Police Officer Lessey bring Minor A into a room (*Id.*). Minor C was also brought into the room (*Id.*). Minor B observed Respondent go in and out of the aforementioned room several times (*Id.*).

Minor B testified further that on March 19, 2015, at approximately 1000 hours, he and Minor A were on their way to school when they stopped at a store to buy a snack for lunch (T. 75). After they exited the store, Minor B observed "the truancy van" and Respondent's car pull up to the location (*Id.*). When Minor B exited the store from the rear door, he saw Respondent and Police Officer Torres (*Id.*). Torres stopped him and brought him to her van (*Id.*). Minor B observed another person pursuing Minor A, who had run from the scene (*Id.*). Minor A was eventually caught and brought to the van (*Id.*).

While Minor B was inside the van, Respondent came over to it, opened a door and asked Minor A why he was running as Minor A got in (*Id.*). Minor B testified further that Respondent spoke to Lessey, saying, "This f—g piece of s—t; [I'm] going to be arresting [him] for every little thing once he turns 16" (T. 75-76). Respondent then asked Lessey for Minor A's date of birth (T. 76).

CCRB offered the hearsay statement of Minor C in evidence which was admitted by stipulation (CCRB Ex. 3-C). In his statement, Minor C admitted that he was involved in an altercation on March 12, 2015, which resulted in him being transported to the 94th Precinct for

the completion of juvenile reports (CCRB Ex. 3-C, p. 4-5.). Minor C stated that while at the precinct, a police officer spoke with the other boy involved in the fight and asked him what happened (CCRB Ex. 3-C, p. 7). According to Minor C, the officer warned the other boy that he needed to stop getting in trouble because "he was getting older and could be arrested and put away for a long time" (CCRB Ex. 3-C, p. 8). Minor C denied hearing that officer tell the other boy that he couldn't wait until he turned 16 so that he could be arrested every day (CCRB Ex. 3-C, p. 8-9). When Minor C was questioned specifically about whether an officer referred to the boy as "a f -- g piece of s -- t," the following exchange ensued:

MR. BROWNE: Okay. And did you ever hear the officer call the, the other boy a f -- g piece of s -- t?

Minor C: W-, it was a white, it was a police officer in there that said that.

MR. BROWNE: W-, oh, did he say that?

Minor C: It was a different kind of officer. It was a different officer that said that.

MR. BROWNE: Which officer?

Minor C: [unintelligible] it was a Polish officer.

MR. BROWNE: So when did he talk to the other boy?

Minor C: We was, we was in there. We was in a room –

MR. BROWNE: Mm-hmm.

Minor C: -- and the Polish officer just walked in.

MR. BROWNE: Okay.

Minor C: He was like, oh you got – you finally got him. Then he said, what you just said.

MR. BROWNE: Okay. And y-, can, can you repeat what I just said?

Minor C: No. I'm not.

MR. BROWNE: Okay. So he called him a f -- g piece of s -- t?

Minor C: Yeah.

MR. BROWNE: How many times?

Minor C: Once.

MR. BROWNE: Did he ever tell the boy that he was going to be arrested?

Minor C: Yeah.

(CCRB Ex. 3-C, p. 9-10). Minor C further described "the Polish officer" as being a white male, approximately "35, 40, almost 40" (CCRB Ex. 3-C, p. 10).

Respondent testified that he has been a member of this Department for 11 years (T. 84).

The 94th Precinct Schools team has two other members: Police Officers Kieron Lessey and Sandy Torres (T. 88). Prior to becoming a member of this Department, Respondent served in the Soviet military for three and one-quarter years; was a policeman in Ukraine for seven years; and was a construction worker (T. 84-86). Respondent stated that he became familiar with Minor A over the course of five years through 25 to 30 encounters where either he or another member of the schools team stopped him for truant behavior (T. 94). Respondent described him as "very hard to talk to," in contrast with other students, with whom he enjoyed a jocular relationship (T. 95). Respondent categorically denied ever calling Minor A "f -- g piece of s - t;" telling him that once he turned 16 he would take him to Central Booking every single day for every little thing; or that he couldn't wait to lock him up (T. 104, 108, 110). Respondent denied ever arresting Minor A and mostly interacted with him in the role of a Schools Team officer on truancy issues (T. 103-104, 111). Respondent had no recollection of the incident on March 12, 2015 and a partial recollection of encountering Minor A on March 19, 2015 (T. 107-108, 109-110).

On cross-examination, Respondent was questioned regarding his relationship with Minor A:

- Q. Okay. So so you don't like Minor A is that fair to say?
- A. One more time. I don't like?
- Q. – Minor A, you don't like that kid, do you?
- A. I can't give you answer like a yes or no.
- Q. Okay.
- A. I just I just never think about that.
- Q. I'm sorry. Say it again?
- A. I said I never think about that; like him or don't like him. He's just – you know, he's just a kid, you know, and that's my job, you know.
- Q. Sure. You consider him a problem kid, don't you?
- A. Yes.
- Q. Okay. And you consider his brother a problem kid, too, don't you?
- A. Yes.

(T. 112-113). While Respondent described Minor A and his brother as "problem kids," he stated in later testimony, "Yeah, they're problem kids but still, you know, like somebody have [sic] to work with them" (T. 125).

Respondent testified that Minor A had been disrespectful to him by saying "None of your f - g business" on previous occasions when he encountered him when he should have been in school and he asked Minor A why he wasn't in class (T. 114-115). Respondent added that such disrespect was not abnormal, in that other students had spoken to him using that language (T. 115).

Respondent offered the April 24, 2015 hearsay statement of Police Officer Kieron Lessey in evidence, which was admitted without objection (Respondent's Ex. A-2). In his statement to CCRB, Officer Lessey acknowledged receiving a "10-39" call at approximately 1205 hours on March 12, 2015 which resulted in him detaining Minor A and Minor C for Disorderly Conduct and Trespassing (Respondent's Ex. A-2, p. 5). They were both transported to the 94th Precinct for the preparation of juvenile reports and Minor A was released to his mother at approximately 1245 hours (*Id.*). While at the precinct, Officer Lessey stated that Minor A and Minor C were separated by a partition in the juvenile room (Respondent's Ex. A-2, p. 7). Officer Lessey stated that he did not recall whether Respondent was present in the precinct at the time he processed Minor A's juvenile report (Respondent's Ex. A-2, p. 7-8). Officer Lessey denied hearing any conversations between Minor A and Respondent and specifically denied hearing the statements attributed to Respondent which are the substance of Specifications 1 and 2 (Respondent's Ex. A-2, p. 8-9).

Officer Lessey stated further that on March 19, 2015, at approximately 1008 hours, he encountered Minor A and Minor B (Respondent's Ex. A-2, p. 10-11). Officer Lessey first stated that he saw them when Respondent had them stopped on a corner, then clarified himself to state that he and Officer Torres stopped Minor A after he walked off (Respondent's Ex. A-2, p. 10-11, 12). Officer Lessey denied hearing Respondent make the statements which are attributed to him and which form the substance of Specifications 3 and 4 (Respondent's Ex. A-2, p. 13).

CCRB offered the April 24, 2015 hearsay statement of Police Officer Sandy Torres in evidence, which was admitted without objection. In her statement to CCRB, Officer Torres asserted that she was present in the 94th Precinct stationhouse on March 12, 2015, at approximately 1220 hours preparing a juvenile report for Minor C (CCRB Ex. 4-B, p. 5).

Officer Torres stated that she and her partner had taken Minor A and Minor C into custody for fighting (CCRB Ex. 4-B, p. 5-6). Officer Torres could not recall whether Respondent was at the 94th Precinct at the time she was preparing the juvenile reports and similarly did not remember if Respondent made the statements which are attributed to him and which form the substance of Specifications 1 and 2 (CCRB Ex. 4-B, p. 7-8).

On March 19, 2015, Officer Torres recalled seeing Minor A and Minor B at approximately 1008 hours near a store (CCRB Ex. 4-B, p. 10). Minor A initially ran away from the officers but Minor B stopped; Minor A eventually stopped and both [REDACTED] brothers entered Officer Torres' police van (CCRB Ex. 4-B, p. 10-11). Officer Torres recalled that shortly thereafter, Respondent came over to the van, opened a door and began speaking (CCRB Ex. 4-B, p. 11). Officer Torres stated that she could not recall what, Respondent may have been saying because she was focused on Minor B and obtaining information from him (CCRB Ex. 4-B, p. 12). Officer Torres specifically denied hearing Respondent utter any of the statements which are attributed to him in Specifications 3 and 4 (CCRB Ex. 4-B, p. 12-13).

Few things are more difficult, yet more fundamental to the role of a trier of fact, than the task of attempting to reconstruct the most probable nature of a past event on the basis of conflicting testimonial accounts. While the law creates the framework within which such a task is accomplished, the ultimate determination of which account to accept in such cases depends almost solely on an assessment of witness credibility. That assessment remains the exclusive province of the fact finder.

In this case, the challenge is particularly difficult because the central factual issue is whether certain words were spoken by Respondent. The only witnesses who report Respondent's use of the words are three teenagers, each of whom has their own credibility

issues. Respondent, who denies using the words, has his own interest in the outcome of this case. Finally, the two hearsay police witnesses gave unpersuasive statements.

In making such an assessment, the trier of fact should consider a wide range of factors, including but not limited to, witness demeanor, corroborating evidence, the consistency of a witness' account both at trial and over time, the degree to which the witness is interested in the outcome of a case, the potential prejudice or bias of the witness, and perhaps most basically the degree to which the witness' account is logical and comports with common sense and general human experience (*Maloney v. Suardy*, 202 A.D.2d 297, 609 N.Y.S.2d 179 [1st Dep't 1994]). In this case, I credit Minor A's testimony as having the ring of truth because he candidly admitted his history of truancy, because his testimonial demeanor was forthright, and because his testimony was unembellished. I further credited Minor A's testimony because Minor C, although a hearsay witness, was present at the 94th Precinct at the same time Minor A was and corroborated Minor A's assertion that Respondent had called him "a f—g piece of s—t." In identifying the speaker of the words directed to Minor A, Minor C described the only Caucasian officer he observed on March 12th, which description fits Respondent.

I further credit Minor B's testimony, despite a presumptive bias in favor of his brother, because his testimony was plausible, forthright and unembellished. Minor B corroborated Minor A's assertion that Respondent spoke to him on March 12th while inside the 94th Precinct in that Minor B testified that he saw Respondent go in and out of a room where Minor B knew his brother was being held. That Minor B did not embellish his observations by asserting that he, too, had heard the offensive language Respondent directed toward his brother, imbues his testimony with the ring of truth.

I find that with respect to the March 19th incident, Minor B's testimony is credible because he made certain statements against his interest. For example, he admitted at the outset that he was not in school when he should have been and further conceded that Minor A had run from the police. He was present in the van where the alleged courtesy and threats occurred. Similarly to Minor A, Minor B was straightforward in his testimony that corroborated the statements Respondent made, and did not embellish by adding more aggravating allegations.

Respondent's defense at trial was that Minors A, B and C fabricated the accusations. While it is possible for any of these witnesses to have done so, any credibility assessment must take into account whether they would have sufficient motivation to testify falsely. Although Minor A and Minor B admitted to being stopped by Respondent on numerous occasions for truancy, such stops do not result in an arrest record; accordingly, they do not provide much of an incentive for retribution. Moreover, the March 12th incident is alleged to have occurred inside the 94th Precinct, which would be an odd location in which to situate a fabricated confrontation between Minor A and Respondent, given the likelihood that other police officers present would handily refute such an account. Respondent had nothing to do with Minor A's detention on March 12th and would have had no reason to interact with him that day, lending credence to Minor A's accusation that he made a gratuitous, disparaging remark.

I further find that Minor A's claim that Respondent was discourteous to him, and threatened to arrest him, on March 19th is similarly credible for many of the same reasons as the March 12th allegations: the alleged misconduct is limited to the use of foul language and generally disparaging commentary. Furthermore, his testimony regarding the events of March 19th was corroborated by Minor B. It is probative that the offensive language used in both instances is almost identical. There is no embellishment of either inflammatory language or threats of

violence which might support a claim that Minor A was being vindictive in fabricating a charge of misconduct against Respondent.

In contrast, Respondent offered only his denial of the charges and vague testimony from a third-party witness to refute Minor A's corroborated allegations. The statements of Lessey and Torres were not particularly probative on the issue of Respondent's alleged courtesy or threats, in that they each stated they did not hear Respondent use discourteous language, or a threat to arrest Minor A, on either March 12th or March 19th, which is far less persuasive than a declaration that Respondent never spoke the offensive words.

Based upon the credible evidence in the record, I find that CCRB has met its burden of proof by a preponderance of the evidence that Respondent was discourteous to Minor A on March 12, 2015 and March 19, 2015. Similarly, I find that CCRB has met its burden of proof by a preponderance of the evidence that Respondent threatened to arrest Minor A on March 12, 2015 and March 19, 2015. Accordingly, I find him Guilty of Specifications 1, 2, 3 and 4.

PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on July 11, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

CCRB has requested that Respondent forfeit five vacation days. In previous cases, Respondents have lost from one to eight vacation days for discourteous language (*Case No. 2015-13502 [July 29, 2016]*)[Fourteen-year police officer negotiated with CCRB a penalty of two vacation days for stating to an individual, "WHO ARE YOU TO ASK AN OFFICER DOING HIS JOB WHAT'S RIGHT AND WRONG. WHO DO YOU THINK YOU ARE? THAT IS

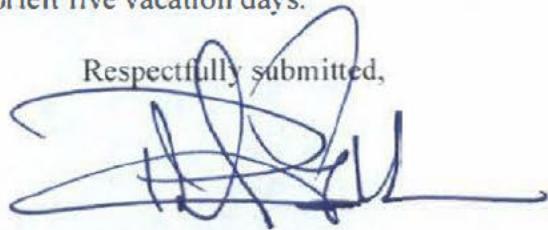
NONE OF YOUR FUCKING BUSINESS”]; *Case No. 2014-12503* [July 27, 2016][Nine-year police officer with no prior disciplinary history negotiated with CCRB a penalty of five vacation days for issuing two disorderly conduct summonses to an individual without sufficient legal authority and for telling the individual, “WHO THE FUCK DO YOU THINK YOU ARE”]; *Case No. 2014-11867* [May 25, 2016][Sixteen-year police officer with one prior adjudication negotiated with CCRB a penalty of two vacation days for (i) acting discourteously toward an individual in that he picked up the individual’s backpack and threw it from the vestibule of a store outside the building, (ii) threatening an individual with the use of force, and (iii) speaking discourteously to an individual in that he stated, “You’re a dickhead. You’re a dickhead”]; *Case No. 2014-11998* [October 14, 2015][Ten-year lieutenant with no prior disciplinary record forfeits one vacation day for discourteously telling complainant in an aggressive manner, “Who are you, who are you? Take your phone. Get out of here.” Members of the public have the right to videotape police action, and Respondent failed to present a safety justification for forcefully moving complainant away from the scene]; *Case No. 2014-11416* [September 10, 2015][Thirteen-year police officer with one prior adjudication forfeits eight vacation days for discourteously telling a prisoner in the holding cell, “I own you,” and, “My dog has enough sense not to pee in its cage”]; *Case No. 2014-12026* [September 2, 2015][Eleven-year sergeant with no prior disciplinary record forfeits five vacation days for using discourteous language during a stop. Respondent called the stopped individual a “faggot” and told him, “Go back to the projects, I’ll see you on the street. I’ll see you in the hood”]).

In this case, Respondent’s language fell short of the standard of professionalism required of all members of this Department. Even assuming Respondent’s admonitions were intended to motivate Minor A into a more responsible pattern of behavior, the tone of his comments was such

that any aspirational exhortation was obscured by the facially disparaging language.

Accordingly, I recommend that Respondent forfeit five vacation days.

Respectfully submitted,



Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED

MAR 15 2017
James P. O'Neill
JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER VLADIMIR RADIONOV
TAX REGISTRY NO. 939265
DISCIPLINARY CASE NO. 2015-14005

On his last three annual performance evaluations, Respondent received an overall rating of 4.0 "Highly Competent." He has not been awarded any medals.

[REDACTED]

Respondent has no prior formal disciplinary history.

A handwritten signature in blue ink, appearing to read "Paul M. Gamble".

Paul M. Gamble
Assistant Deputy Commissioner